

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Willis Broadcasting Corporation)	File No. EB-01-OR-052
Licensee of WGRM-FM)	NAL/Acct. No. 200132620004
Greenwood, Mississippi)	FRN No. 0004-3042-67

MEMORANDUM OPINION AND ORDER

Adopted: April 15, 2002

Released: April 17, 2002

By the Chief, Enforcement Bureau:

I. Introduction

1. In this *Memorandum Opinion and Order* ("Order"), we grant in part and deny in part Willis Broadcasting Corporation's ("Willis Broadcasting") petition for reconsideration of the *Forfeiture Order* that we released on October 18, 2001.¹ In the *Forfeiture Order*, we assessed a \$25,000 forfeiture against Willis Broadcasting for violating Sections 1.89(b), 11.35(a), 17.4(a)(2), and 73.3526(c) of the Commission's Rules ("Rules").² The noted violations relate to Willis Broadcasting's failure to respond to Commission correspondence; failure to have operational Emergency Alert System ("EAS") equipment at WGRM-FM; failure to register WGRM-FM's antenna structure; and failure to make WGRM-FM's public inspection file available for inspection. For the reasons explained below, we reduce Willis Broadcasting's \$25,000 forfeiture to \$22,000.

II. Background

2. On April 24, 2001, an agent from the Commission's New Orleans, Louisiana Field Office ("Field Office"), inspected Willis Broadcasting's WGRM-FM facility in Greenwood, Mississippi. During his inspection, the agent found that WGRM-FM's EAS equipment was neither properly installed nor capable of receiving EAS messages,³ WGRM-FM's antenna structure was not registered,⁴ and that WGRM-FM had failed to ensure that its public inspection file was available at all times during normal business hours.⁵

3. On May 3, 2001, the agent issued a *Notice of Violation* ("NOV") to Willis Broadcasting, via certified mail, return receipt requested, citing the EAS, antenna structure, and

¹ *Willis Broadcasting Corp.*, 16 FCC Rcd 18565 (Enf. Bur. 2001).

² 47 C.F.R. §§ 1.89(b), 11.35(a), 17.4(a)(2), 73.3526(c).

³ *See* 47 C.F.R. § 11.35(a).

⁴ *See* 47 C.F.R. § 17.4(a)(2).

⁵ *See* 47 C.F.R. § 73.3526(c).

public inspection file violations. Pursuant to Section 1.89(b) of the Rules, the agent directed Willis Broadcasting to respond to the *NOV* within twenty days⁶ of the May 3, 2001 *NOV* issuance date and noted that enforcement action might follow if it did not. The U.S. Postal Service delivered the *NOV* to Willis Broadcasting on May 7, 2001. Receiving no response to the May 3, 2001 *NOV*, on May 25, 2001, the agent resent a copy of the *NOV* to Willis Broadcasting and warned it that it was required to respond to Commission correspondence. This time, the agent directed Willis Broadcasting to respond within fifteen days of the May 25, 2001 reissuance date and noted that penalties might follow if it did not. The U.S. Postal Service delivered the resent *NOV* to Willis Broadcasting on May 31, 2001. Willis Broadcasting did not respond. Subsequently, on July 3, 2001, the District Director of the Field Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Willis Broadcasting for its failure to respond to Commission correspondence, EAS, antenna structure, and public inspection file violations.⁷ Willis Broadcasting did not respond to the *NAL*. On October 18, 2001, we issued the *Forfeiture Order*, noting that Willis Broadcasting had not responded the *NAL*, and in which we imposed the proposed \$25,000 forfeiture. Willis Broadcasting now asks us to reconsider the *Forfeiture Order* and reduce or cancel the \$25,000 forfeiture.

III. Discussion

4. According to Willis Broadcasting, at the time the agent inspected WGRM-FM and during the following period at issue here, its president and chief executive officer was struck with a disabling illness that disrupted Willis Broadcasting’s normal functioning and led to its failure to respond to the *NAL*. Willis Broadcasting asks us to waive the \$25,000 forfeiture because its failure to respond was caused by events beyond its control. Willis Broadcasting’s failure to respond to *NAL* is not a violation of the Rules and did not result in any penalty, per se. That failure did lead, however, to our issuance of the *Forfeiture Order* in this case. Accordingly, we deny Willis Broadcasting’s request that we waive the \$25,000 *NAL* and turn to the other issues Willis Broadcasting raises in its petition for reconsideration.

5. To the extent that Willis Broadcasting is requesting that we reconsider the issuance of the *NAL* for the Section 1.89(b) of the Rules violation for failing to respond to the *NOV*, we will examine Willis Broadcasting’s purported reasons for the delay in responding. Section 1.89(b) of the Rules specifies that:

[i]f an answer cannot be sent or an acknowledgment cannot be made within such 10-day period by reason of illness or unavoidable circumstance, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation for the delay.⁸

According to Willis Broadcasting, it is the licensee of twenty-one AM and FM stations and holds 100% of the stock of several subsidiary corporations that are Commission licensees. Willis Broadcasting states that its president and chief executive was solely responsible for the affairs of

⁶ Section 1.89(b) of the Rules requires a written answer within 10 days of receipt of the *NOV* or such other period as may be specified. 47 C.F.R. § 1.89(b).

⁷ *Willis Broadcasting Corp.*, *NAL*/Acct. No. 200132620004 (Enf. Bur., New Orleans Field Office rel. July 3, 2001) (“*Willis NAL*”).

⁸ 47 C.F.R. § 1.89(b). Willis Broadcasting used its petition for reconsideration to explain its delay.

Willis Broadcasting and its subsidiary corporations, and was primarily responsible for overseeing the day-to-day operations at Willis Broadcasting's broadcast facilities. Willis Broadcasting then details its president and chief executive officer's illness and its corporate response of appointing its vice president to "address any issues or matters pertaining to the day-to-day operations and activities of the corporation and any matters pertaining to the radio stations, which the President has been unable to address." Instead of specifying a date certain when the vice-president took on the president and chief executive's duties and obligations, Willis Broadcasting simply states that it was from the advent of the illness and continues to the present. We know that the agent inspected WGRM-FM on April 24, 2001. We do not know, however, when Willis Broadcasting's president and chief executive first fell ill. Lacking that information and the subsequent date that Willis Broadcasting appointed the vice president to discharge the president and chief executive's duties and obligations, we are unable to evaluate whether Willis Broadcasting's November of 2001 explanation of its seven-month delay in responding to the May 3, 2001 *NOV*, which was reissued on May 25, 2001, was made at the earliest practicable date.⁹ Thus, we deny Willis Broadcasting's request for reconsideration of the Section 1.89(b) of the Rules violation and affirm the issuance of the monetary forfeiture for this violation.¹⁰

6. Willis Broadcasting seeks reconsideration of the Section 11.35(a) of the Rules violation included in the *NAL* and *Forfeiture Order*. Specifically, it takes issue with our statement in the *Forfeiture Order* that it "did not have Emergency Alert System" equipment installed" According to Willis Broadcasting, WGRM-FM's EAS unit was in place when the agent inspected the station, albeit malfunctioning. Our review of the record reveals that in the *Forfeiture Order*, we inadvertently omitted the words "and operating" to the sentence "Willis . . . did not have Emergency Alert System equipment installed" ¹¹ We do not find that the inadvertent omission of the two words "and operating" is prejudicial to Willis Broadcasting in this instance because the *NAL* sufficiently recounted that "the EAS equipment was not properly installed or capable of monitoring or receiving EAS messages."¹² Indeed, Willis Broadcasting concedes that the EAS unit was malfunctioning and has since fixed the unit and obtained a backup EAS unit. Consequently, we find that Willis Broadcasting was not complying with Section 11.35(a) of the Rules at the time of the agent's inspection. Thus, we deny reconsideration on this issue, and affirm the issuance of the monetary forfeiture for this violation, as clarified herein.

7. Willis Broadcasting next seeks reconsideration of the Section 17.4(a)(2) of the Rules violation included in the *NAL* and *Forfeiture Order*. Willis Broadcasting asserts that WGRM-FM's antenna structure was registered, contrary to our assertion in the *NAL* and *Forfeiture Order*. When the agent inspected WGRM-FM, he determined that the antenna

⁹ Commission records reveal that in several prior cases that are not pending before us, Willis Broadcasting failed to respond to *NOVs* that it received in April, June, and September of 1999 regarding the operation of its stations.

¹⁰ Compare with *Northeast Passage Corp.*, 16 FCC Rcd 21890 (Enf. Bur. 2001) (claim for relief granted where supported by description of illnesses, pertinent dates of disability, and effect on petitioner's ability to respond to Commission correspondence).

¹¹ See *Willis Broadcasting Corp.*, 16 FCC Rcd at 18565.

¹² *Willis NAL* at ¶ 2.

structure associated with WGRM-FM was not registered.¹³ Willis Broadcasting now tells us that the antenna structure was registered at the time of the agent's inspection and provides us with ASR number 1010218. Our review of the Commission's ASR number database reveals that the antenna structure was in fact registered at the time of the agent's inspection and that "Clay V. Ewing, d/b/a WGRM" is listed as the antenna structure's owner. Therefore, we will reduce the forfeiture amount by the \$3,000 amount noted in the *NAL* for this violation. Although we find that WGRM-FM's antenna structure was registered, we instruct Willis Broadcasting to update the appropriate Commission antenna structure ownership records if Mr. Ewing no longer owns the antenna structure associated with WGRM-FM.¹⁴

8. In its final request for reconsideration, Willis Broadcasting states WGRM-FM's public inspection file "was at the Station at the time of the inspection." Willis Broadcasting concedes that "there may have been some documents misfiled and/or missing" from the public inspection file at that time, errors that Willis Broadcasting has since corrected. The operative provision of Section 73.3526(c)(1) for a licensee that maintains its main studio within its community of license is that the public inspection file "must be available for public inspection at any time during regular business hours."¹⁵ Willis Broadcasting's contention that WGRM-FM's public inspection file was at the station, albeit missing some parts, does not excuse it from failing to provide the public inspection file to the agent at his request. Accordingly, we deny Willis Broadcasting's request for reconsideration on this point and affirm the issuance of the monetary forfeiture for this violation.

9. In conclusion, after subtracting \$3,000 for the Section 17.4(a)(2) of the Rules violation that we are dismissing in this *Order*, we find Willis Broadcasting liable for a \$22,000 forfeiture.

IV. Ordering Clauses

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended ("Act"),¹⁶ and Sections 1.80(i) and 1.106 of the Rules,¹⁷ Willis Broadcasting Corporation's petition for reconsideration **IS GRANTED** to the extent indicated herein and **IS DENIED** in all other respects.

11. Payment of the \$22,000 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,¹⁸ within 30 days of the release of this *Order*. If the forfeiture is not

¹³ The agent did not see the Antenna Structure Registration Number ("ASR") number posted per Section 17.4(g) of the Rules. In addition, the station's general manager was unable to produce any documentation relating to this matter and told the agent that he did not know whether the antenna structure was registered. The agent's search of the ASR number database did not show that Willis Broadcasting had registered the structure.

¹⁴ See 47 C.F.R. § 17.57; see *American Tower Corp.*, 16 FCC Rcd 1282 (2001) (new owner liable for Section 17.57 of the Rules violation for failing to update antenna structure ownership information after the sale of the antenna structure).

¹⁵ See 47 C.F.R. § 73.3526(c)(1).

¹⁶ 47 U.S.C. § 405.

¹⁷ 47 C.F.R. §§ 1.80(i), 1.106.

paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁹ Payment may be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200132620004 and FRN No. 0004-3042-67 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁰

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by certified mail, return receipt requested, to Willis Broadcasting Corporation, 645 Church Street, Suite 400, Norfolk, Virginia 23510, and to its counsel, David M. Hunsaker, Esq., Putbrese, Hunsaker & Trent, P.C., 100 Carpenter Drive, Suite 100, P.O. Box 217, Sterling, Virginia 20167-0217.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁸ 47 C.F.R. § 1.80.

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 C.F.R. § 1.1914.